



Author

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How

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Not to Be

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Stupid

When asked to speak after an award like this, the temptation is to reflect on all the things that have made you such an awesome person and then present those to your audience along the lines of “How to Be a Big Success.” Sadly, that won’t work for me. While I have had my share of successes, I’ve had more than my share of failures, disappointments, and regrets. When I was younger, I wanted advice on how to be a big success. Now, with the gift of experience, I’m more interested in the flipside: how not to fail, or at least how not to fail unnecessarily. ★ Don’t get me wrong. I hope you are all big successes in law and in life. That’s your upside potential, your ceiling. But today I want to talk about your foundation, your floor. So I’ve entitled my remarks “How Not to Be Stupid.”

Illustrator

Dan Page

Now you might think, “How dare he? Why does he think we might mess up our lives doing something stupid?” In my defense, I do have a variation of the young boy’s gift in the movie *The Sixth Sense*. I see stupid people everywhere, and they don’t even know they are stupid. It’s true that you all, and lawyers generally, are really smart people. But it has been my sad experience that lawyers make stupid mistakes at about the same rate as everybody else, only with greater collateral damages.

So here we go: five ways not to be stupid.

1 Don't Be Corrupted by Power

I’m guessing very few speakers are talking to the engineering students or the communications majors or the registered nurses about the corruptions of power. But you have to think about it as lawyers because you will have power. You will learn people’s darkest secrets; you will have the power to end marriages, break up companies, and send people to prison. In fact, a mere letter from you can ruin someone’s life. So yes, you will have power. And getting and keeping power can be corrupting. It is critical to decide in advance how you will respond.

I’ve often thought we should ask presidential candidates early on, “What will you *not* do in order to be president?” In other words, “What matters to you even more than becoming president?” Chuck Colson, counsel to President Nixon, was alleged to have said he would run over his own grandmother to get Nixon reelected. His single-minded devotion to power eventually landed him in prison. (Interesting afterward: he later founded Prison Fellowship, the largest prisoner and ex-prisoner outreach program in the country.)

How about you? What will you *not* do to get the power and prestige and money of a successful law career? What is nonnegotiable with you?

Will you neglect your family? Will you lie about discovery or give the judge a phony excuse for why your pleading is late? Will you turn a blind eye to your client’s falsehoods? Will you make up fake reasons for using preemptory challenges on minority

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panel members? The list goes on and on. Decide now—as lawyers say, *ex ante*—what you won’t do and what price you won’t pay.

This brings to mind Lord Acton’s famous aphorism, that “power tends to corrupt and absolute power corrupts absolutely.”¹ But corrupts whom? Of course it corrupts the person at the top, but that’s too obvious. What’s really concerning is the corrupting influence that power has on everybody orbiting the center of that power. This is easy to see around presidential campaigns: the fake

enthusiasm, the lying and hypocrisy, the shifting alliances. But you will also see it in less lofty settings: the corruption of power around a powerful senior partner, or district attorney, or important client, or, yes, even a judge. It starts with sycophancy and ends



with sickness. It begins with laughing at jokes you don't like and ends with you betraying your deepest principles.

Here are two stories that illustrate, in very small ways, how standing up early on can help set the tone for your career.

I know a guy who once was a very young prosecutor. The head of the office was an intimidating, imperious man with a quick temper. He'd become upset because the state bar was investigating a local DA for misconduct. So he sent a memo around "requesting" donations to the DA's defense fund. And then he sent his top assistant around to collect. This young prosecutor was sympathetic to the cause but objected, quite rightly, to being forced to donate. As he tells it, he gave money with a note to the boss that said, "I'm happy to give, but I think it's wrong that you forced people to give."

You might think this is a small thing, and I suppose it is. But in fact, it was a big step that put him on a path of independence, fortifying him to stand up for himself in bigger tests down the line.

When I was a young prosecutor just a couple of weeks on the job, my turn came to handle emergency weekend requests. This included whether to authorize warrantless probable-cause searches or arrests, typically grounded in some exigency. I got a call from the regional head of the FBI, who told me he had a team of agents poised outside a motel that had a major drug distribution ring inside. He needed the green light from me, which he was sure I would give. I heard him out, and what little I knew about probable cause didn't fit what he was telling me. But I was honestly intimidated, partly from my own inexperience and partly because he was the sort of person who tended to ruin the lives of people who got in his way. I told him I would think about it and call him back, which was enough by itself to make him really annoyed with me.

After I hung up, I wasn't sure what to do. In reality, I was trying to come up with the guts to do the right thing. But I immediately got another phone call, this time from a line agent who later became a good friend of mine. He had overheard his boss talking to me on the phone, and then he had snuck around behind the SWAT van to call me. He whispered to me: "I can tell that you think there isn't probable cause. You're right. Tell him no."

That was all it took to set me straight. I said no, and I weathered the subsequent storm. And like the guy in the first story, it put me on a path of having the courage to give the right answer, *ruat caelum*—no matter what.

You can do the same. Put it in your minds now—before you are on the phone with someone who wants the wrong answer and will make you pay a price for denying him—that you will not bow to power.

2

Keep Learning

On the subject of learning, I have some good news and some bad news.

Here's the good news: after you finish law school and take the bar exam, you will never have to take another test in your life. You will have reached the pinnacle of a doctoral degree in the American academy.

Here's the bad news: you will soon discover that, when it comes to the law, you will know almost nothing.

Ah, but the good news comes back around again: this gives you the opportunity to embark on a lifetime of learning. Perhaps your experience will be like mine. While I am deeply grateful for my formal education, almost everything of value I have learned, I learned since I turned 30.

Of course, your first area of postgraduate learning will be the law. It will take you years of study to become truly knowledgeable in a particular area of the law and years of practice to acquire the practical skills you will need. But don't worry. Unlike a graded exam, you will be highly motivated to learn, because if you don't, you will starve.

You may get an added boost of motivation from one of your opponents. A senior lawyer I know once objected to a document that was being offered by a rookie lawyer as a business record. The objection was improper foundation, which was sustained. The rookie tried again and got the same objection with the same ruling.

After a third try and a third objection, the judge said, "Counsel, you know this can ultimately be admitted."

To which the senior lawyer responded, "Judge, I know how to get this in, and you do too. The question is, does he?"

If that won't send you back to your evidence casebook with renewed enthusiasm for the subject, I don't know what will.

But you will learn so much more than just hornbook law. Your clients will teach you about themselves, about their businesses and inventions, and about life. And for many of you, your cases will put you at the intersection of law and public policy. You will have occasion to think about and study environmental issues, the costs and benefits of collective bargaining, how tort cases relate to risk management, or what is a fair and just sentence for someone whose life has had no fairness and precious little justice.

I hope the prospect of all this learning excites you. You will be a better lawyer and a happier person—and you will greatly avoid being stupid—if you dig in and keep learning.

3

Two Cheers for Thinking Like a Lawyer

We don't talk as much as we once did about "thinking like a lawyer," I suppose for fear of sounding elitist. But if you've been paying attention, law school has given you a marvelous tool for separating fact from fiction—or at least from the unknown—and for focusing on what matters most in a mass of information. To oversimplify, thinking like a lawyer involves questioning assumptions, defining terms, and asking how or whether people really know what they claim to know.

Far too many lawyers, however, use this tool to become a tool. While it's a great way to test whether a witness really remembers what happened or whether an expert really knows what she claims, it's a terrible way to show the weakness in your child's political views or to test whether your spouse's complaints against you are internally coherent.

Thinking like a lawyer is just one way to see the world. Stating your arguments better than your loved ones doesn't make you right. It just means you use a particular skill better. I've had lawyers tell me, after a Pyrrhic victory in some family fight, "I was just going by what she said!" Well, as long as we are questioning assumptions, let's ask, Why is that a good way to interact with friends or loved ones? Why go by what she said, instead of what she meant, or what he felt?



You don't *become* a lawyer when you graduate—you become a human being with a law degree.

I hope you will never have the experience I had, of a daughter saying to you, “Dad, I can’t talk with you because I feel trapped by your arguments.” There are a lot of ways I could describe how that felt. Winning isn’t one of them.

This idea of thinking about how we know things, at a broader level, is actually a branch of metaphysics called epistemology. I’m indebted to Professor Tyler Cowen for what he calls the central lesson of epistemology: “You are wrong so, so, so often. . . . It is a lesson which hardly anybody ever learns.”²

But you can learn it in your lifetime of learning. A law school education should give you the same thing that an afternoon with Socrates would have given you: humility, in the face of an awareness of all that you don’t know. I’m surprised there aren’t more humble lawyers, since the law is practically a study in human weakness, and only willful blindness will exempt us from the lesson. Humility also happens to be the key to continued learning: humility and a hunger to know more. Try to remember that you don’t *become* a lawyer when you graduate—you become a human being with a law degree. That degree does not define you. Don’t lose your humanity.

I think that’s what the great Learned Hand was expressing when he talked about the spirit of liberty:

*The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the mind of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who . . . taught mankind that lesson . . . ; that there may be a kingdom where the least shall be heard and considered side by side with the greatest.*³

In my dreams, this is a description of my courtroom.

Don't Be Confused About Time

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Lawyers tend to have a strange relationship with time and the passage of time. They divide their workday up into six-minute increments and have yearly goals for the number of hours they will bill. As a result, they often have an internal clock ticking in the background of their lives, measuring everything they do against the backdrop of this quota they live with.

Let me be blunt: this is a terrible relationship to have with time. You have to find ways to live your life without becoming a slave to the clock. It can be done, and you don’t have to leave private practice to do it. Let me suggest one important point that might help: don’t be confused about quality time and quantity time.

If you haven’t already, you will hear busy lawyers talking about quality time, particularly in regard to family life. The concept goes something like this: I have to devote a ton of time—quantity time—to my work, and I have only a very limited time for my loved ones. So I make sure the time I spend with my family is quality time: I focus on them, I make sure we structure our time to do things that are useful, and in this manner I make these moments we have together really count.

This is almost completely backward. Quality time is for work. Work is where we should make each minute count, where we focus intensely on the job at hand, and where we eliminate competing demands and distractions. You will, by necessity, spend most of your waking

life at work. But if you pay attention and act intentionally, you can reduce your time spent at work significantly—in my experience, up to 25 percent.

This leaves quantity time for home. It's still limited, of course, and given your demanding career, you will need to be very thoughtful about it. By necessity, you will have to structure, or schedule, some of it. But that time will be defined by its essential characteristic: you will be off the clock.

Because you have worked hard to get home, you don't feel rushed when you are there. You have time to breathe, time to just be in the same room with family members, doing whatever comes up, or nothing at all. You're not forcing your loved ones to have a relationship with you on your schedule. You're not, in effect, looking at them and saying, "It's 9 o'clock. I have 15 minutes. Tell me how you are doing."

I've seen my daughter do it the right way as a senior associate at a large international law firm. She's worked very, very hard to become a highly valued member of her team. But at the end of the day, she leaves on her schedule, not theirs. And when she is at home with her husband and son for the evening, work almost never intrudes, and her heart and mind are with them. It can be done, even in demanding settings.

Just a week ago we were all gathered for her wedding. My children were all there, along with my siblings. In our free time we did what we all love to do: tell funny stories about the past. I was struck by how many of our treasured memories have taken place during unstructured moments and unplanned events, in the quantity time we've had together. It's a little like feeling the Spirit. It cannot be forced,⁴ and it's difficult to plan, but you'll experience it if you have made sacrifices to be in the right place with the right attitude.

What Do We Value?

AWARD ACCEPTANCE REMARKS
BY MICHAEL MOSMAN

I am very grateful to be back at BYU Law School, a place that is dear to my heart, and I'm humbled by this award. It's interesting to think about what is valued in a group or society, either through awards or fame or money. Do we value wisdom or power? Point guards or centers? Actors or politicians?

And while we are thinking about it, who did Jesus value? I think I can make a pretty good case that Jesus singled out only a handful of people for specific praise during his mortal life: the widow with her mites, the centurion, the importunate widow, Nathaniel, Mary, and a few others. I've tried to get my youth Sunday School class to think about this. We have a mental exercise we go through at the start of class. I ask them, "If Jesus ran a newspaper, what did you see this week that would've made it onto the front page?"

I'm not meaning to denigrate this wonderful award in any way—an award I will always treasure. But if I had it in my power to hand out a lifetime achievement award, I would give it to my wife, Suzanne. Her life has been filled with the sorts of things that would make the front page of Jesus's newspaper. This includes a lifetime of service as an RN, in a variety of settings. Her tremendous skill and vast knowledge, coupled with her great warmth and kindness, make her a nurse people remember and ask for. In particular, she has been a safe harbor of acceptance and compassion for the anxious, the frightened, the mentally ill, the foreigner with language and cultural challenges, and the elderly.

This also includes a lifetime of learning. Suzanne is one of the most widely read people I have ever known. She is among the handful who've actually read both *Moby Dick* and *War and Peace*, along with hundreds of books from every genre. When she returned to school after many years' absence to obtain her master's degree, she was chosen as the outstanding student in her program. She is a trained musician, a master chef, a fitness expert, a science whiz, a scholar of Victorian literature, and one of the most encyclopedic, interesting, and profound students of the gospel I have ever encountered. Her Gospel Doctrine class is a marvel to behold. She is a master teacher, backed up by a lifetime of study, infectious enthusiasm, love for class members, and guidance from the Holy Spirit.

Suzanne is, most fundamentally, a true disciple of Jesus. My life has been filled with opportunities to serve others because Suzanne has had her eyes and her heart wide open to see them. They include people she knows well, like the oft-forgotten elderly brothers and sisters around us. But they also include people she meets in the dressing room at Walmart, the ladies restroom at the movies, the checkout line at Target, or the elevator of our hotel. If I had a dollar for every time I've heard "God bless you, Suzanne" from someone who'd only known her 10 minutes—just long enough for her to help with whatever was wrong—I'd be a wealthy man.

If I've accomplished anything in life, it's out of a desire to be worthy to be a partner to her and perhaps in some small way make her proud of me. And so, with your permission, Dean Smith, I'd like to share this award with Suzanne Hogan Mosman.

Finally, love truth and don't lie.⁵ You will have many occasions as a lawyer to think about truth and honesty. There may be no other career that more directly confronts questions of truth and honesty than the law. If you're like me and most trial lawyers I know, you'll come away from a career in the law convinced that memory is something we construct over time, that eyewitness testimony is often unreliable, that experts don't know much of what they claim to know, that your perspective limits your perception, and that people lie all the time, even for trivial reasons. Ironically, all of this just makes the truth more precious, even when it seems more elusive.

So make a commitment early on: love the truth and don't lie. Nothing will create more disaster in your professional life than lying to your clients or to the court, so just steel yourself to tell the truth. This will often involve having the guts to deliver bad news, including the bad news that you have made a mistake. Just do it. Get it in your head right now: "I will not lie."

Of course, since we are talking about being honest, I will confess that my real interest in honesty, as a way of avoiding being stupid, has nothing to do with clients or the court. Over the years, the number-one way my classmates have been stupid is by cheating on their spouses. You could fill a library with the books that have been written on marriage, but I want to come at it another way—that almost always, cheating is preceded by and grounded in lying. The lie that you've grown apart, the lie that he's no longer interesting, the lie that things are fine when they aren't.

Let your iron commitment to truth-telling as a lawyer spill over into your home. Let your awareness of the devastation that follows in the wake of a lie told in court persuade you that the same devastation can follow the lie you tell at home. The fundamental lesson to be learned from a life in the law is the same one Oliver Cromwell wrote in his letter to the general assembly of the Church of Scotland in 1650: "I beseech you, in the bowels of Christ, think it possible you may be mistaken."⁶ So train yourself to disbelieve yourself, and school yourself to understand that the feelings you feel, which seem so real to you in the moment, could be false—could even be a lie. You and I are capable of inventing a marriage that exists only in our minds, a marriage that isn't matched by the one we are living in, but we are too blind to see it.

Your skills as a lawyer can be a powerful tool for cross-examining your most difficult witness—yourself. When you are preparing a case, you will invest a lot of careful thought into imagining your case from your opponent's perspective. A really good trial lawyer could, on a moment's notice, try the other side's case. Use that skill to imagine what it's like to live with you. Visualize your contribution to the problem, and you will discover the best path forward.

It takes courage to be a good lawyer. If you are afraid of conflict or trouble or if you can't say or do hard things, you'll have a tough time. Use that courage at home. If there are problems, face them, even when it's easier just to pretend everything's fine.

More than your legal skills, it is this fidelity to truth, even hard truths, that will cause your family members and friends to turn to you in times of trial. You will find yourself called on to help navigate loved ones through life's toughest moments, from unplanned pregnancies to end-of-life care. No other skill you are beginning to acquire will bless the lives of those around you more than truth-telling. But it all starts with loving the truth and not lying.

This, I think, will be your burden even more than it has been mine—the burden of standing up for and speaking the truth. You will see hundreds of people take an oath to "tell the truth, the whole truth, and nothing but the truth." And they will do so, sometimes at great personal cost. You must demand the same of yourself. President James E. Faust said, "Honesty is more than not lying. It is truth telling, truth speaking, truth living, and truth loving."⁷

It will not be easy, but you can trust in the power and freedom that comes with truth. Aleksandr Solzhenitsyn wrote, "The simple step of a simple courageous man is not to partake in falsehood. . . . 'One word of truth shall outweigh the whole world.'"⁸ No matter how large or small your circle of influence, even if your kingdom consists of a single soul, you will find it takes courage to have fidelity to the truth. I pray you will find that courage. cm

NOTES

- 1 Lord John Acton, letter to Bishop Mandell Creighton, Apr. 5, 1887.
- 2 Tyler Cowen, "Epistemology," *Marginal Revolution* (blog), Feb. 20, 2006, marginalrevolution.com/marginalrevolution/2006/02/epistemology.html.
- 3 Learned Hand, speech delivered in Central Park, New York City, on I Am an American Day, May 31, 1944.
- 4 See John 3:8.
- 5 See Jordan B. Peterson, Rule 8, *12 Rules for Life: An Antidote to Chaos* (Toronto: Random House Canada, 2018), 203–32.
- 6 Oliver Cromwell, letter to the General Assembly of the Church of Scotland, Aug. 3, 1650.
- 7 James E. Faust, "Honesty—A Moral Compass," *Ensign*, Nov. 1996.
- 8 Aleksandr Solzhenitsyn, Nobel Banquet speech in Stockholm, Sweden, read by Karl Ragnar Gierow, Dec. 10, 1970; quoting a Russian proverb.